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April 21, 2009

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication,
CC Docket No. 96-45**

Dear Secretary Dortch:

Yesterday, Peter Gose (via teleconference) and I, on behalf of Mobi PCS, Inc. ("Mobi"), and Matthew Brill, on behalf of Cricket Communications, Inc. ("Cricket"), met with Julie Veach, Jennifer McKee, Thomas Buckley and Alexander Minard of the Federal Communications Commission ("Commission") to urge the Commission to provide guidance to the Universal Service Administrative Company ("USAC") regarding permissible implementations of Section 54.307(b) of the Commission's rules ("Rule 54.307(b)"), which requires competitive Eligible Telecommunications Carriers ("ETCs") to report the number of lines they serve in a rural incumbent local exchange carrier's ("ILEC") service area.¹ Although the Commission's rules do not mandate the filing of a notice of *Ex Parte* Communication for this meeting, we are filing this notice to disclose the issue we discussed during the meeting.

The purpose of our meeting was to discuss permissible means for implementing Rule 54.307(b) when a customer uses a Post Office Box for a billing address. The Commission, USAC and ETCs all would benefit from FCC guidance to USAC regarding permissible implementation of Rule 54.307(b)'s requirement that ETCs report lines served in ILEC serving areas when the billing address is a Post Office Box.

¹ 47 C.F.R. § 54.307(b).

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Rule 54.307(b) provides in relevant part as follows:

In order to receive [universal service] support pursuant to this subpart, a competitive [ETC] must report to [USAC] the number of working loops it serves in a service area Competitive [ETCs] providing mobile wireless service in an incumbent LEC's service area shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area.²

The rule makes plain that competitive ETCs providing mobile wireless services must use the customer's billing address to report the number of lines they serve in each rural ILEC's service area.

With respect to the vast majority of billing addresses, ETCs can easily identify the rural ILEC service area that corresponds with that billing address. For example, ETCs can use available software to identify automatically the rural ILEC service area associated with each billing address.³ However, when a customer utilizes a Post Office Box as its billing address, the ETC cannot use geocoding software to identify automatically the rural ILEC service area

² *Id.* The use of the billing address for identifying the relevant rural ILEC was established and affirmed in several Commission orders. See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, ¶ 180 (2001) ("Rural Task Force Order") (concluding that a customer's billing address was a "reasonable surrogate to identify a mobile wireless customer's location for the purpose of identifying a corresponding disaggregation zone and thus the appropriate per-line support level."); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission and National Telephone Cooperative Association*, 17 FCC Rcd 5635, ¶ 13 (2005) ("Rural Task Force Recon. Order") (denying a request for reconsideration of its use of the customer's billing address to determine the customer's location for purposes of providing high-cost support); *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, ¶ 82 (2005) (reconfirming that use of the customer's billing address was a reasonable approach).

³ See, e.g., TeleAtlas Telecommunications Products, at <http://www.adci.com/html/teleatlas.php>; CostQuest USF Tool Kit at http://costquest.com/costquest/Docs/Product_Service_Profile%20-%20USACToolsILEC_v3.pdf. (noting that their product can assist carriers in "determin[ing] the location of each and every customer and attribut[ing] appropriate service counts to each wire center.")

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associated with the billing address. Instead, the ETC must manually identify the rural ILEC service area associated with the billing address.

In some rural areas where residents and businesses must use a Post Office Box for their billing address, a single rural ILEC serves most, if not all, of the customers served by a particular Post Office. For example, an entire rural town and surrounding area may lie within a single ILEC serving area such that every customer with a Post Office Box in the town's Post Office is served by that ILEC. In these circumstances, a reasonable implementation of Rule 54.307(b) is for the ETC itself simply to identify the rural ILEC that serves the customers with Post Office Boxes for billing addresses, and report the number of working lines for those customers in the corresponding rural ILEC's service area. Specifically, the ETC could determine that a particular rural Post Office lies within a specific ILEC's service area such that all customers with Post Office Boxes from that Post Office are likely served by that ILEC, in which case the ETC would report working lines for customers with Post Office Boxes from that Post Office in that ILEC's service area. Since every customer would identify the same ILEC serving area if asked, no purpose would be served by requiring the ETC to seek confirmation from each customer.

In other rural areas where residents and businesses must use a Post Office Box for their billing address, two or more rural ILECs serve those customers. In such circumstances, a reasonable implementation of Rule 54.307(b) is to permit each customer individually to identify the rural ILEC that serves his or her billing address (*i.e.*, the rural ILEC from which they receive service at the listed billing address), and report that customer's working line(s) in the corresponding rural ILEC's service area.

Both means for implementing Rule 54.307(b) are reasonable, because customer reported information regarding the billing address is used to identify the appropriate ILEC serving area for reporting purposes. Indeed, Rule 54.307(b) is based upon the assumption that customers have no incentive to provide false information in order to increase universal service payments to its service provider. As the Commission explained when it rejected a petition to reconsider its decision to rely on the customer's billing address rather than the Mobile Telecommunications Sourcing Act ("MTSA") definition of "place of primary use" to determine a mobile wireless customer's location,

[i]n both cases, the underlying address information will be provided by the customer, who is unlikely to be providing false information in order to increase universal service payments to its service provider. . . . Further, . . . if a competitive ETC misuses a customer's billing address by identifying a customer in a high-cost zone when service is primarily provided in a low-cost zone for the

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purposes of receiving a higher level of per-line support, the Commission may take appropriate enforcement action.⁴

Accordingly, where the use of a Post Office Box for a billing address makes it administratively difficult to identify the rural ILEC's service area associated with that billing address, it is reasonable to rely upon information provided by the customer to do so. Likewise, where only one rural ILEC serves an area where certain residences and businesses must rely on Post Office Boxes for billing addresses, it is reasonable to report the working loops for those customers in the corresponding rural ILEC's service area.

For these reasons, Mobi and Cricket respectfully urge the Commission to provide USAC with guidance regarding permissible implementations of Rule 54.307(b) in the interest of facilitating USAC's administration of the universal service fund and avoiding unnecessary questions and disputes during universal service audits. Specifically, Mobi and Cricket request that the Commission send a letter to USAC clarifying that either of the two means for implementing Rule 54.307(b) set forth in this letter are permissible provided that the ETC implements the rule consistently and retains all records that may be required to demonstrate to the Commission or Administrator that the reports made were in compliance with Rule 54.307(b). The requested guidance letter would not constitute an exhaustive list of permissible implementations of 47 C.F.R. § 54.307(b) or affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the competitive ETC support rules and requirements.⁵

⁴ *In re Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, ¶ 82 (2005).

⁵ The Commission already addressed the issue of abusive reporting practices in its *Rural Task Force* orders. Specifically, the Commission recognized that carriers could arbitrage the universal service high cost support fund program by self-identifying its customers as being in a high-cost zone. *Rural Task Force Order*, ¶ 183. The Commission noted in the 2001 *Rural Task Force Order* that it would "take appropriate enforcement action" if a carrier engaged in arbitrage. *Id.* The Commission reiterated this position in its 2002 *Rural Task Force Recon. Order*, stating it "believe[s] that sufficient safeguards are in place to alleviate those concerns." *Rural Task Force Recon. Order*, ¶ 14.

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Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Please contact the undersigned if you have any questions or need additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal line extending to the right.

Todd D. Daubert

*On behalf of Mobi PCS, Inc. and
Cricket Communications, Inc.*

cc: Nicholas Alexander
Jennifer Schneider
Mark Stone